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IN THE

Supreme Court of The United States

_____ TERM, 19 ____

NO. 948

JIM FAIR,

Petitioner,

v.

FRED O. DICKINSON, JR.,
as Comptroller of the
State of Florida,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE

STATE OF FLORIDA

MEMORANDUM OPPOSING CERTIORARI

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ATTORNEYS FOR RESPONDENT.

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This Petition for Writ of Certiorari fails to comply with the rules of this Court in many jurisdictional respects including, but not limited to failure to file the proper record to be certified to the Court at the time the petition is filed; filing the petition within the proper jurisdictional period and failing to inform this court of the subsequent and final determination of the questions raised in the present petition by the Supreme Court of the State of Florida in cases No. 38,962 styled CLAUDE R. KIRK, JR., as Governor of the State of Florida, Appellant, vs. LEW BRANTLEY, Representative, 21st District, and MALLORY E. HORNE, Senator, 5th District, individually and as Co-Chairmen, Joint Management Committee, Florida Legislature, and FRED O. DICKINSON, JR., as Comptroller of

the State of Florida, and BROWARD WILLIAMS, as Treasurer of the State of Florida, Appellees; and No. 38,956 styled STATE OF FLORIDA ex rel. LEW BRANTLEY, Representative, 21st District, and MALLORY E. HORNE, Senator, 5th District, individually and Co-Chairmen, Joint Management Committee, Florida Legislature, Relators, vs. CLAUDE R. KIRK, JR., as Governor of the State of Florida, FRED O. DICKINSON, JR., as Comptroller of the State of Florida, and BROWARD WILLIAMS, as State Treasurer of the State of Florida, Respondents, wherein the Supreme Court of the State of Florida put to rest fully, finally, and completely each and every question raised by the present petition so that this application for Writ of Certiorari not only is untimely but the present controversy not involving a federal question is patently moot.

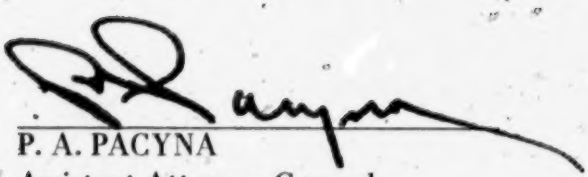
The opinion in cases Nos. 38,962 and 38,956 in the Supreme Court of Florida, reported in 228 So.2d 278, is an attachment to this memorandum.

Not only has the Supreme Court of Florida determined the validity of Chapter 69-3 Laws of Florida (designated by petitioner as House Bill 795) but the Supreme Court opined constitutional references made by petitioner are inapplicable to upset the validity of the legislative action complained of here and which is the subject matter of this petition.

The Application for Injunction was denied on January 7, 1970 and the Petition for Writ of Certiorari should also be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General



P. A. PACYNA
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The Capitol
Tallahassee, Florida

ATTORNEYS FOR RESPONDENT

EXHIBIT

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1969

Claude R. KIRK, Jr., as Governor of the State of Florida, Appellant,

v.

Lew BRANTLEY, Representative, 21st District, and Mallory E. Horne, Senator, 5th District, individually and as Co-Chairman, Joint Management Committee, Florida Legislature, and Fred O. Dickinson, Jr., as Comptroller of the State of Florida, and Broward Williams, as Treasurer of the State of Florida, Appellees.

STATE of Florida ex rel. Lew BRANTLEY, Representative, 21st District, and Mallory E. Horne, Senator, 5th District, individually and as Co-chairmen, Joint Management Committee, Florida Legislature, Relators,

v.

Claude R. KIRK, Jr., As Governor of the State of Florida, Fred O. Dickinson, Jr., as Comptroller of the State of Florida, and Broward Williams, as State Treasurer of the State of Florida, Respondents.

Nos. 38962, 38956.

Supreme Court of Florida.

Nov. 10, 1969.

Action attacking validity of legislative pay increase statute. The Circuit Court of Leon County, Hugh M. Taylor, J., entered an order upholding validity of statute and the consolidated cases came before the Supreme Court on an appeal from that order and on a petition for writ of mandamus. The Supreme Court, Boyd, J., held that although legislative pay raise bill, passed over Governor's veto, did not take effect until August 5 because of constitutional provision, the retroactive pay raise to April 1 was valid.

Affirmed and alternative writ discharged.

1. Statutes ⇐67

Constitutional prohibition against extra compensation for services rendered unless compensation be allowed by bill passed by two-thirds of members of each house is carried forward as a general act and is equal to but of no greater dignity than any other general acts including act increasing compensation of legislators. Laws 1969, c. 69-3; F.S.A.Const. 1885, art. 16, § 11.

2. Statutes ⇐21

By passing increased compensation bill over Governor's veto by a two-thirds vote of the members of each House Legislature had complied with 1885 constitutional prohibition against extra compensation for services already rendered unless by a vote of two-thirds of members of each House. Laws 1969, c. 69-3; F.S.A. Const.1885, art. 16, § 11.

3. States ⇐63

There is no prohibition against legislators increasing

salaries during the terms for which they are elected.

4. States ⇐63

Although legislative pay raise bill, passed over Governor's veto, did not take effect until August 5 because of constitutional provision, the retroactive pay raise to April 1 was valid. Laws 1969, c. 69-3; F.S.A.Const.1968, art. 3, § 9; art. 12, § 10; F.S.A.Const.1885, art. 16, § 11.

5. Constitutional Law ⇐140(1)
States ⇐63

Statute increasing pay of legislators for the term during which they were elected was not invalid on ground that it impaired an obligation of contract. Laws 1969, c. 69-3.

Gerald Mager, Tallahassee, for appellant-respondents.

William G. O'Neill, Ocala, of O'Neill & Trammell and Joseph C. Jacobs of Ervin, Pennington, Varn & Jacobs, Tallahassee, for appellees-relators.

BOYD, Justice.

These consolidated cases are before us on petition for writ of mandamus and appeal from the order of the Circuit Court of Leon County upholding the validity of Chapter 69-3, Laws of Florida, and declaring the duty of the Comptroller, Governor and Treasurer to do all acts required for the issuance of warrants for legislative salaries pursuant to that Act.

Chapter 69-3, Laws of Florida, provides as follows:

"Section 1. Subsection (1) of section 11.13, Florida Statutes, is amended as read:

"11.13 Compensation of members.—(1) (a) Beginning April 1, 1969 the annual salaries of members of the senate and house of representatives, payable in twelve (12) equal monthly installments, shall be:

1. The president of the senate and speaker of the house of representatives, fifteen thousand dollars ($15,000) each.

2. All other members of the senate and house of representatives, twelve thousand dollars ($12,000) each."

Appellant's first contention is that the Act violates Section 11 of Article XVI of the Constitution of 1885, F.S.A., which provides:

"No extra compensation shall be made to any officer, agent, employe, or contractor after the service shall have been rendered, or the contract made; nor shall any money be appropriated or paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, unless such compensation or claim be allowed by bill passed by two thirds of the members elected to each house of the Legislature."

It is argued that since the bill providing for the pay raise was introduced on April 18, 1969, and provided for compensation to begin April 1, 1969, it increases compensation for services already rendered and is void. The Circuit Court found that even if Section 11 of Article XVI of the Constitution of 1885 applied, its requirements had been met. The Act ultimately, in overriding the Governor's veto passed by a two-thirds vote of the members of each house.

[1, 2] Since the Legislature complied with Section 11 of Article XVI of the Constitution of 1885, it is unnecessary to decide whether Chapter 69-3 could have been enacted by a simple majority. Section 11 of Article XVI of the Constitution of 1885 is carried forward as a general act. [1] It is equal to, but of no greater dignity than, other general acts, including Chapter 69-3.

[3] The trial court also rejected the contention that legislators cannot increase salaries during the terms for which they were elected. There is no basis for this contention in any existing law. Reference has been made to provisions in the Constitutions of 1838, 1861, 1865 and 1868, limiting the power of the Legislature to increase its own pay. No such provision is present by carryover, or otherwise, in the Constitution of 1968, which controls in these proceedings.

Appellants also assert that the trial court erred in not striking Chapter 69-3 because the retroactive pay raise violates the provision of Section 9 of Article III of the Constitution of 1968 which provides:

> "Each law shall take effect on the sixtieth day after adjournment sine

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1. Constitution of Florida, § 10, Art. XII (1968).

> die of the session of the legislature in which enacted or as otherwise provided therein. *If the law is passed over the veto of the governor it shall take effect on the sixtieth day after adjournment sine die of the session in which the veto is overridden,* on a later date fixed in the law, or on a date fixed by resolution passed by both houses of the legislature." (e.s.)

[4] Under the above provision, Chapter 69-3 took effect August 5, 1969. Appellant states that the pay raises could not be retroactive to April 1, 1969, as provided in the Act. The learned trial judge correctly rejected the foregoing contention as follows:

> "The words 'take effect' have long been used in the Constitution of Florida to indicate the exact time at which a legislative enactment becomes law, but not necessarily the time as of which the rights of persons may accrue under that law.
>
> "August 5, 1969, was the date the *law* took effect. It was not the date that the salaries fixed by that law took effect.
>
> "The Constitution does not deny to the legislature the power to pass retroactive laws. Ex post facto laws and laws impairing the obligations of contracts are prohibited. Section 10, Article I, Constitution of 1968. But the mere fact that a law is retroactive

> or is dependent upon past events for its operation does not make it invalid."

The Court has also considered and finds without merit, appellant's contention that Chapter 69-3 is invalid because it impairs the obligation of contract.

[5] The validity of a statute must be determined without reference to whether the Court considers the legislation good or bad. With clinical objectivity we have tested Chapter 69-3 by the existing laws of this State, including the Constitution of 1968. We find the Act valid.

Our determination of the questions raised on appeal renders further action on mandamus proceedings unnecessary and the alternative writ is discharged.

Accordingly, the judgment of the trial court herein is affirmed.

It is so ordered.

THORNAL, CARLTON and ADKINS, JJ., and RAWLS, District Court Judge, concur.

DREW, Acting Chief Justice, concurs specially, with opinion.

DREW, Acting Chief Justice (concurring specially).

I concur in this decision. I wish to point out, however, that the question of whether the *amount* of Legislative salaries is subject to judicial review is neither raised nor decided in this case.

PROOF OF SERVICE

I, P. A. PACYNA, Attorney for Respondent, FRED O. DICKINSON, JR., and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 29th day of January, A.D. 1970, I served copies of the foregoing Memorandum Opposing Certiorari on the party listed below:

JIM FAIR
124 S. Franklin Street
Tampa, Florida

by mailing a true and correct copy, in a duly addressed envelope, with postage prepaid.

P. A. PACYNA, Esquire
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